Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	
Deployment of Wireline Services Advanced Telecommunications Capability	)	CC Docket No. 98-147

REPLY COMMENTS OF ACCESS INTEGRATED NETWORKS, INC.

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Access Integrated Networks, Inc. ("AIN") hereby replies to the comments of BellSouth Corporation ("BellSouth") and the other incumbent local exchange carrier ("ILEC") commenters. AIN's reply is focused on BellSouth because AIN currently provides competitive local exchange service only within BellSouth's service territory and thus it is only with BellSouth that AIN has actual competitive experience. AIN, is however, preparing to launch service in the SBC, Qwest and Verizon regions to bring the same competitive benefits to small business consumers in those areas that it has brought to consumers in BellSouth's region. Thus, while the points made below respond specifically to BellSouth's comments ("BellSouth Comments" or "Comments"), AIN regards them as applicable at a general level to all of the ILECs' comments.

I. Introduction and Summary

AIN is a competitive local exchange carrier ("CLEC") serving approximately 30,000 small business customers, with over 100,000 lines as of the end of June 2002. Unlike many CLECs who focus on downtown business districts, AIN provides service throughout the markets

it serves and the great bulk of its customers are in small- and medium-sized cities and rural areas. Attached is a list of over 700 cities/towns throughout the nine-state BellSouth operating region in which AIN serves customers. AIN provides service to its customers through the unbundled network element platform ("UNE-P").

The Commission's current rules require ILECs to make all of the UNEs comprising UNE-P available to requesting CLECs, with one critical exception. In access density zone 1 (which corresponds roughly to the downtown business districts) of the top 50 metropolitan statistical areas ("MSAs") in the country, the ILECs are not required to provide the switching UNE (and thus UNE-P) for service to customers with four or more lines.[1]

As discussed in Section III(d) below, this restriction has materially hampered AIN's ability to serve its target mass market customer base of small business consumers. Not only is AIN denied access to the country's 50 largest metropolitan areas (since it cannot economically enter a market where only a small sliver of the addressable customers can be served); the restriction creates an indirect, but nevertheless very real drag on its ability to serve customers even outside of the affected areas. Without access to the dense potential revenue base that the top 50 markets represent, AIN's ability to fund the expansion of its service is significantly impaired, especially with respect to high-cost rural areas where AIN's ability to provide service economically is marginal.

The states have begun to recognize, and address, the negative effects of the Commission's switching restriction on mass market competitive entry. The Texas Public Utility Commission, after compiling a comprehensive record of thousands of pages of material and

[1] The Commission also conditioned the ability of ILECs to refuse to provide switching as a UNE on their having made available the so-called "enhanced extended loop," or "EEL." AIN is, however, unaware of any ILEC that has been deprived of the benefits of the restriction because of its failure to provide EELs, despite widely-reported problems with ILEC provisioning of EELs.

conducting an exhaustive impairment analysis, recently declared switching an unrestricted UNE in Texas. Tennessee and Georgia are conducting similar proceedings, and a number of other states are considering doing the same.

BellSouth, however, seeks to subvert the progress the states have made in securing the benefits of competition for the mass market, urging the Commission to deny the states any real role in deciding whether or not CLECs are impaired without access to switching (and all other UNEs) within their borders. The Commission should reject this result out of hand and, in fact, should expand the role of the states. As discussed below, it is the states that are in the best position to assess local conditions and conduct detailed impairment analyses. This is all the more the case in light of the United States Court of Appeals for the District of Columbia's recent opinion in *USTA v. FCC*, 2002 U.S. App. LEXIS 9834 (D.C. Cir. May 24, 2002) ("*USTA*"), which appears to require a highly granular and market-specific impairment analysis of the sort that the states are uniquely positioned to perform.

In addition to ill-advisedly urging the Commission to curtail the valuable role played by the states in determining what network elements should be unbundled, BellSouth urges the Commission to dramatically reduce its own national list of UNEs. BellSouth Comments at 1. While BellSouth urges reductions in the availability of UNEs almost across the board, BellSouth's proposal that the Commission do away with unbundled switching is of the greatest concern from the perspective of mass market competition. BellSouth's view that the switching UNE should be eliminated rests on a number of false assumptions and misguided policy imperatives. As discussed below, BellSouth miscomprehends the broadly pro-competitive nature of the Act; miscasts UNE-P as an illegitimate arbitrage vehicle when it is in fact the only really viable method of competitive entry into the mass market; urges the Commission to rely on the phantom of "inter-modal" competition as the basis for eliminating switching; and last but not

least fails to understand that, even where CLECs have deployed their own switches, they remain impaired with respect to serving the mass market.

II. BellSouth's View that the Role of the States Should Be Minimized Is Wrong

While the Commission has adopted a national list of UNEs and established certain minimum obligations that the ILECs must meet, under the Act, the states also play a key role. As the Commission found, "section 251(d)(3) of the Communications Act grants state public utility commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of section 251 and the national policy framework instituted in this Order." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 154 (1999) ("*UNE Remand Order*"). In short, under the Act's dual jurisdictional structure, the Commission's national list is a floor, not a ceiling. The states are free to add UNEs to the national list.[2]

Numerous states have in fact conducted impairment analyses under Section 251 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 251, and added UNEs within

[2] Numerous states have interpreted Section 251(d)(3) as allowing them to add UNEs to the national list, including UNEs that the FCC previously declined to place on the list. *See, e.g. Joint Application of Sprint Communications Company, L.P., United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas, and United Telephone Company of Southeastern Kansas for the Commission to Open a Generic Proceeding on Southwestern Bell Telephone Company's Rates for Interconnection, Unbundled Elements, Transport and Termination, and Resale*, Docket No. 97-SCCC-149-GIT, 14 (Kan. PUC 2000) (the Kansas Corporation Commission determined that it has the authority to conduct an impairment analysis to add OS/DA to the national list, although declined to do so on the merits); *Petition for Arbitration of the Interconnection Agreement between BellSouth Telecommunications, Inc., and Intermedia Communications, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 27385 (Al. PSC 2001) ("[T]his Commission has the ability to require the unbundling of packet switching and frame relay if it determines that a competitor is impaired without such requirement."); *ICG Telecom Group, Inc.'s Petition for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Arrangements with Ameritech Ohio*, Case No. 99-1153-TP-ARB (Ohio PUC 2000) (adding the EEL as a new UNE to the FCC's national list after conducting an impairment analysis).

their states. In many cases the states have added UNEs not addressed by the Commission's national list. In other cases, after conducting a localized impairment analysis, the states have determined that a UNE that was removed or restricted on the national minimum list should be made available on an unrestricted basis within a particular state. For example, the Texas Public Utility Commission in a recent arbitration decision has declared that switching is an unrestricted UNE throughout the state of Texas. Similar proceedings addressing unbundled switching are underway in other states, including Georgia and Tennessee.

In BellSouth's view, however, the Commission should strip state public utility commissions of any role in the decision-making process. BellSouth urges the Commission to reverse its earlier reading of the Act and "clarify that the states are not at liberty under the statute to 'restore' or 're-list' FCC de-listed elements, such as the current unbundled local switching exemption . . . ." BellSouth Comments at 5. And, prospectively, BellSouth would have the Commission "articulate a national policy . . . that the current list of UNEs is exhaustive" and that the "states should not have the ability to modify the national list of UNEs in any way." *Id.*

Not only would such an approach run counter to the Act, which explicitly preserves a role for the states; it would also overlook the extremely valuable role that the states can and should play in ensuring the continued spread of local competition. Rather than reduce or eliminate their role, the Commission should, as several commenters in this proceeding have suggested, expand the role of the states in determining which network elements the ILECs must make available on an unbundled basis pursuant to Section 251.

The states are simply in a much better position to judge the unbundling needs of CLECs in their local markets than is the Commission, sitting in Washington. This is all the more the case in light of the D.C. Circuit's recent decision in *USTA*. There, in overturning the Commission's *UNE Remand Order*, the court faulted the Commission for adopting uniform rules

mandating unbundling "in every geographic market and customer class, without regard to the state of the competitive impairment in any particular market." 2002 U.S. App. LEXIS 9834, *17. The court made clear that, in its view, a proper impairment analysis takes due account of the "nuances" of "specific markets or market categories." *Id.* at *29.[3] The Commission does not have the resources to conduct the fact-intensive, detailed analysis that will be required to make localized and customer category-specific impairment showings. Moreover, the state commissions are in a far better position to evaluate local competitive conditions and to discern, for example, whether CLECs may be impaired with respect to a particular UNE in certain areas within a state but not within others.

III. The Commission Should Reject BellSouth's View that Unbundled Switching (and Thus UNE-P) Should Be Eliminated

A. BellSouth's Crimped View of the Act Fails to Acknowledge Its Broadly Pro-Competitive Purpose and Design as Articulated by the Supreme Court

The starting point for any analysis of whether a particular network element must be made available as UNEs is Section 251. BellSouth urges on the Commission an extraordinarily limited view of that provision. In BellSouth's view, the purpose of Section 251's unbundling provisions is to encourage only "the promotion of facilities-based competition," a step which is itself "extraordinary," and therefore warranting only "directionally limited, temporary, transitional measures." BellSouth Comments at 7. According to BellSouth those were the "critical policy choices [that] have already been made by Congress," id., and the Commission

[3] Interestingly, even before the court's decision, the Commission was already gravitating toward a similar view, expressing in the notice of proposed rulemaking that initiated this proceeding its inclination to adopt a more granular statutory analysis. *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 01-361, ¶ 36 ("we seek comment on applying the unbundling analysis . . . in a manner that takes into account geographic variations in the availability of alternatives to the incumbent's network").

erred in the past by straying from the Congressionally-mandated course and going too far in the direction of opening markets to competition, id. at 7-9.

BellSouth's view of the Act, however, flies in the face of the Supreme Court's recently-released opinion in *Verizon Communications, Inc. v. FCC*, 152 L. Ed. 2d 701 (2002). Not only did the Court uphold the Commission's UNE pricing methodology; in doing so, the Court could hardly have articulated a broader, more pro-competitive vision of the Act that makes clear that BellSouth's crimped reading is simply wrong.[4]

In the Court's view, the intent of the Act was to do more than merely passively open the ILEC markets to allow for the *possibility* of competitive entry. Rather, the goal was to "uproot[] the monopolies" and affirmatively "reorganize markets by rendering regulated utilities' monopolies vulnerable to interlopers," by "giv[ing] aspiring competitors every possible incentive to enter local retail telephone markets, short of confiscating the incumbents' property." *Id.* at 17-18.[5]

The Court's opinion makes clear that the Act does not see "incumbents and new entrants as equals," *id.* at 63. Instead, it recognizes that, after a hundred years of monopoly protectionism, the incumbents have "an almost insurmountable competitive advantage" over new entrant competitors, *id.* at 18, and "proceeds on the understanding that incumbent monopolists and contending competitors are unequal," *id.* at 63. The Act therefore imposes numerous

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[4] The ILECs, for their part, will surely point to the D.C. Circuit's decision in *USTA*, which, in reversing the *UNE Remand Order*, expressed a much narrower view of the Act's unbundling provisions. The logic and tone of that decision, however, are diametrically opposed to those of the Supreme Court's decision. In light of the inconsistency between the two cases, the Commission has sought reconsideration of *USTA* by the full panel of the D.C. Circuit. It should also be noted that, while the D.C. Circuit reversed the *UNE Remand Order*, it did not vacate the Commission's unbundling rules. Thus, until the Commission revisits those rules on remand (presumably in this proceeding), they remain controlling.

[5] While the Court made this statement in connection with the Act's pricing provisions, it is no less true with respect to the unbundling obligations of Section 251.

unilateral obligations on the incumbents as a mechanism for beginning to level the playing field. *See Id.*[6]

In light of the broadly pro-competitive vision of the Act articulated by the Court, BellSouth's characterization of Section 251's unbundling obligations as being limited to the "directionally limited, temporary, transitional" encouragement of "facilities-based competition" is completely untenable. There is no bias in the Act for or against facilities-based competition.[7] Instead, the Commission can and should read Section 251 as broadly as possible to fully and effectively open the ILECs' monopolies to competition by any and every means specified in the Act, including UNE-P.

Nor should the Commission, as BellSouth suggests, "directionally limit" unbundling policy. According to BellSouth, the Commission should declare "that the current list of UNEs may only be decreased." BellSouth Comments at 5. In other words, BellSouth would have the Commission freeze the Act in time. Today's UNEs would be the only UNEs ever available under the Act, regardless of changes in local competitive conditions and other changes in the marketplace. The Act, however, is by design a dynamic mechanism that allows the Commission

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6 In the words of one of the Act's backers, Sen. Breaux of Louisiana, quoted approvingly by the Court, the duties imposed on the ILECs are "kind of almost a jump-start . . . . I will do everything I have to let you into my business, because we used to be a bottleneck; we used to be a monopoly; we used to control everything." Id. at 16 (quoting 141 Cong. Red. 15572 (1995) (Remarks of Sen. Breaux (La.) on Pub. L. 104-104)).

7 BellSouth repeatedly suggests that, post-September 11th, "potential security vulnerabilities" mandate a policy preference in favor of facilities-deployment. BellSouth Comments at 3. In addition to being a rather cynical ploy, BellSouth's protestations about national security needs have no bearing on whether UNE-P should be made available without restriction on a nation-wide basis. While there may be the need for redundancy in the public networks for national security purposes, there is no prospect of any facilities-based provider overbuilding the entire public switched network in order to be able to offer ubiquitous mass market service. For the vast majority of customers, any competitive wireline offering is going to come from a UNE-P provider, regardless of any redundancy added to the public network for security purposes.

and the states to adjust and fine-tune policy to keep pace with changes in the competitive landscape. If it is to be faithful to its obligations under the Act, the Commission must not tie its own hands (and the states') by surrendering its authority to continue to revise and refine the national list of UNEs as competitive conditions warrant.

B. UNE-P Is the Only Effective Method of Broad-Based Entry Into the Mass Market

AIN is only able to serve the breadth of customers and the varied geographic markets that it does because of the availability of UNE-P. Unlike self-provisioned switching, which requires a concentration of potential customers sufficient to warrant installation of a switch, UNE-P can be used wherever there is a customer desiring competitive service. This means that competition and its attendant benefits are available to all consumers, not merely larger businesses who happen to be located within a loop's-length of a facilities-based CLEC's switch. Thus UNE-P offers small market and rural customers the same access to competitive choice as enjoyed by those in metropolitan areas.[8]

The importance of UNE-P to local competition is reflected clearly in the numbers. For example, in Georgia, where UNE-P only became available in early 2000, by September 2001 it had already grown to account for 4.1% of the end-user lines in the state, representing nearly half of the 9.1% of competitive end user lines. By contrast, lines served by competitors using

[8] As other commenters in this proceeding have explained more fully, even in the top 50 metropolitan areas, where the Commission found that there has been a significant deployment of switching by CLECs, UNE-P is the only sure way of economically providing competitive service to the mass market. Switch-based competitive service is generally uneconomical unless the customer is large enough to have a high capacity digital loop, such as a DS-1 (which is the equivalent of 24 analog voice lines). This is the case because of the costs involved in converting customers served through individual loops. Each individual loop must be manually "cutover" from the ILEC to the CLEC, a process that requires very labor-intensive coordination between the two companies and which has proven to be fraught with trouble. Only when a customer is being served by a DS-1 or other digital facility is the volume of service being provided to the customer sufficient to overcome the impairment of cutting over the loop.

their own switching coupled with a BellSouth-supplied loop accounted for 1.9% of the total competitive penetration. *See* BellSouth Corporation, Reply Affidavit of Elizabeth Stockdale, CC Docket No. 01-277 (Nov. 13, 2001). The acceleration of UNE-P-driven competitive penetration in the state has been even more dramatic over the last year. From January 2001 to December 2001, 154,198 lines were added by competitors using UNE-P. Over that same period, only 8,567 lines were added by competitors using unbundled loops coupled with their own switching. *See* BellSouth Form 477 Responses (for December 31, 2000 and December 31, 2001).

BellSouth nevertheless disparages UNE-P as an almost illegitimate entry vehicle, characterizing it as nothing more than "a market-distorting regulatory arbitrage opportunity." BellSouth Comments at 14. In BellSouth's view, UNE-P only exists because the Commission and the states have set TELRIC rates too low, allowing UNE-P providers to artificially under-price the ILECs and switch-based CLECs, while bringing no value to the marketplace. BellSouth Comments at 9-15. Moreover, BellSouth would have the Commission believe that the very existence of UNE-P has contributed to the demise of switch-based CLECs and to the ILECs' own financial woes. *Id.*

Three responses are in order. First and foremost, there is nothing artificial or inadvertent about the development of UNE-P; it is functioning exactly as the Act intended. The ILECs had 100 years of monopoly protection during which to build a network paid for by the public (i.e. ratepayers). While new entrants can deploy their own facilities to serve concentrated, high revenue business customers, no competitor can in the near term hope to duplicate the ubiquity of the ILEC network through the deployment of their own facilities in order to make effective mass market entry possible.

In order to meet its goal of "eliminat[ing] the monopolies enjoyed by the inheritors of AT&T's local franchises," *Verizon* at 3, as quickly and as broadly as possible, the Act provided

an alternative to each CLEC having to build its own network: the unbundling of the ILEC network. UNEs generally, and UNE-P in particular, are the products of the Act's recognition that the way mass market competition is going to move forward is by new entrants sharing the existing monopoly network and competing on price, services, and innovative offerings. Thus, that "[w]idespread non-facilities based CLECs use of UNEs in general, and UNE-P in particular, substantially shifted market share away from ILECs to CLECs," BellSouth Comments at 11-12, even if true,[9] is not an unintended consequence of the Act, but proof that it is working.

Second, BellSouth offers no evidence that the TELRIC prices set by the states under the Commission's guidance are "well below ILEC 'cost' and 'reasonable profit' as mandated by statute," BellSouth Comments at 10, and there is no reason to believe that that is the case. The Commission's methodology has twice been upheld by the Supreme Court, and the cost proceedings in which prices were set have been exhaustively litigated by the parties and expertly overseen by the state commissions and their staffs. BellSouth may not like the outcome of those proceedings, but that does not suggest that the proper results were not reached.

Finally, BellSouth's claim that UNE-P has played a role in the decline of switch-based CLECs and that "current UNE arrangements proper [sic] BOCs into the same downward spiral," *id.* at 12 n.33, is sheer nonsense. CLECs and ILECs alike have been caught up in a sweeping correction of the entire telecommunications sector. And there has been a very tough culling process as many CLECs with business plans that did not reflect market realities (switch-based mass market service among them) have failed. Despite page after page of psuedo-

[9] BellSouth paints the picture that its marketshare and those of the other ILEC's have been decimated by UNE-P. This is simply not the case. Due in large part to the ILECs' foot-dragging, in most areas of the country (including the entire BellSouth region), UNE-P only became commercially available in mid-2000. While UNE-P providers have made impressive gains in the short time since, and certainly have accounted for a disproportionately large share of the competitive entry into the mass market over the last two years, they still account for only a small (but growing) percentage of the market.

economic theorizing, BellSouth offers no basis for, nor a shred of evidence in support of, its suggestion that the presence of a handful of UNE-P competitors played a role in the financial fates of any of those CLECs. As for contributing to the ILEC's woes, that is the whole point of competition. Though BellSouth bemoans the fact that "the number of ILEC-served access lines (including residential access lines) and ILEC revenue growth, have suffered unprecedented declines," *id.* at 2, such a result only means that the Act is working.[10]

C. "Inter-Modal" Competition Is a Fallacy

As announced in the opening sentence, one of the themes that runs through BellSouth's Comments is that the Commission can pare back its national list of UNEs—and do away with switching altogether—because there is already a sufficient degree of competitive facilities deployment. In particular, BellSouth urges the Commission to consider "inter-modal" competition (i.e. the presence of wireless providers and cable telephony) in making its impairment determinations. Such competition, however, is simply not a significant factor in today's mass market. While there has no doubt been explosive growth in wireless subscribership, and some cable companies are beginning to offer telephony services, AIN can assure the Commission that its small business customers regard neither as an alternative to ILEC-supplied local telephone service. Moreover, cable telephony, where available, remains an almost exclusively residential offering and in many areas cable plant has not even been deployed in the business districts. As for wireless offerings, neither business nor residential subscribers have thus far been willing to substitute a wireless phone for their local exchange service. Aside from the clarity and reliability issues with wireless phones, they are ill-suited to use as the principal

[10] It should also be pointed out that UNE-P based competitors in some senses present less of a threat to ILEC revenue than facilities-based competitors, because at least in the case of UNE-P, the traffic remains on the ILEC's networks generating revenue and (assuming TELRIC rates are set correctly) profits.

telephone lines for small business. Among other things, wireless phones do not offer hunting, the ability to roll a call to a fax, or an easy way of terminating multiple numbers to the same handset,[11] all of which are critical to small businesses.

For the foreseeable future, CLECs will continue to be the only real alternative to the ILEC's services. And for mass market customers, especially in the small towns and rural areas served by AIN, the only really viable form of competitive entry is UNE-P. The simple fact is that without AIN and other UNE-P providers, few if any of AIN's approximately 30,000 customers would have any alternative to BellSouth's services.

BellSouth makes much of the recent advances in the deployment of advanced services, suggesting that the Commission need not unbundle the traditional network because the older copper PSTN is quickly being supplanted by DSL, cable modem, satellite, and fixed terrestrial wireless. While the day may come when all consumers are buying broadband digital connections, the mass market today remains an analog world. The typical small business or residential consumer continues to connect to the public switched network and the Internet over individual copper loops. In light of the Congressional intent to open the local marketplace to competition as quickly as possible, the Commission must set its unbundling policies with an eye to the here and now, not by trying to guess how the market may develop in the future. For the mass market of analog customers, this means that the Commission must ensure the continued availability of UNE-P, which the evidence shows is responsible for the lion's share of competitive entry in the mass market.

[11] This conjures up the image from old Hollywood movies of the business man sitting at his desk with three or four of the old black desktop phones, holding one handset in each hand and a third phone ringing on the desk.

D. CLECs Are Impaired with Respect to Serving the Mass Market Even Where Switching Is Deployed

Notwithstanding the fact that all of the allegedly available mass market alternatives pointed to by BellSouth are, at least for the present, phantoms, BellSouth urges the Commission to altogether eliminate switching as a UNE (and thus do away with UNE-P). *See* BellSouth Comments at 81. In support, BellSouth points to evidence that CLECs have continued to deploy switches, both in and beyond the top 50 MSAs, and that switches are becoming increasingly affordable. *Id.* at 78-82.

BellSouth's position is absurd. It is pure folly to think that any business plan that depends on the deployment of circuit switches to serve the mass market could ever be funded after Wall Street's disastrous experiences with such plans over the last three years. Hardly a week goes by without another switch-based CLEC announcing bankruptcy or the Commission issuing a Public Notice seeking comment on a switch-based CLEC's plans to cease providing service.

And, even if circuit switch-based mass market entry was possible in the major markets (which it is not), even BellSouth would have to agree that there is little or no facilities deployment outside of the big cities, nor is there likely to be given the economics of the currently available circuit switches. While facilities-based competition may spread outside of major markets once the next generation of softswitches becomes commercially viable, it is far from clear when this will occur. Even under the most optimistic projections of when the technology will be ready for deployment and of the improvements in margins that softswitches will make possible, it is hard to see effective facilities-based competition spreading to the secondary and tertiary markets any time in the next several years.

In any case, BellSouth's contention that there has been considerable switch deployment and thus CLECs are not impaired without access to unbundled switching is off the

mark. What BellSouth misses, is that even where competitive switching has been widely deployed in a given geographic area, CLECs are still impaired with respect to the mass market of analog customers without access to switching as a UNE. As discussed above, because of the costs associated with the cut-over process, it is simply not economically viable to serve the individual analog loop customers that characterize the mass market through self-provisioned switching. Thus, while competitive switching has been deployed in many metropolitan areas, those facilities are simply not being used to provide service to the mass market. If competition is going to come to small business and residential customers, at least for the foreseeable future, it is going to come via UNE-P.

IV. The Commission Should Expand the Availability of Unbundled Switching By Removing the Current Restriction

Not only should the Commission not eliminate switching; to ensure the continued availability of mass market competitive choice, the Commission should expand switching's availability by removing the current three-line cap in the top 50 metropolitan areas. As things now stand, AIN, like many UNE-P providers, is effectively precluded from providing service in those markets. It is simply not viable to enter a market where the only available business customers are those with one, two, or three lines; they represent too thin a slice of the addressable market. And, since switch-based providers can only serve a customer economically if they are large enough to warrant a DS-1 or other digital facility, the mass market of analog customers is effectively unreachable in the top 50 markets.[12]

Not only is the current restriction precluding mass market competition from reaching the top 50 markets; it is also creating a drag on the spread of competition even in the smaller

[12] Many switch-based CLECs have begun to utilize UNE-P to reach customers with individual analog lines, even where they have deployed a switch. Even for those dual-mode CLECs, there would still be a huge unaddressable market of all those business customers with more than three lines but not of sufficient size to justify a digital facility.

markets where the restriction does not directly apply. The ability to serve smaller customers in more rural markets is intrinsically linked to the ability to serve larger customers in the major markets. Without access to customers with four or more lines in zone 1 of the top 50 MSAs, UNE-P providers are denied access to the densest, highest margin segment of the market. Additionally, not only do UNE-P providers lose access to a key revenue source, they lose the ability to spread their overhead costs over a sufficiently large base of customers to justify market entry. Thus, because ILECs are able to price UNE-P at exorbitant rates within the top 50 markets, if the ILEC makes the UNE-P available at all, the immediate result of the current line cap is to preclude UNE-P providers from entering the top 50 markets. And, in turn, because UNE-P providers are denied access to the top 50 markets, they are denied access to a critical piece of the revenue and customer base necessary to fund expansion in the secondary and tertiary markets. This handicap is real. It has dramatically slowed AIN's own expansion and has forced AIN not to serve markets that it otherwise would.

V. Conclusion

In order to protect and expand the single most effective vehicle for mass market competitive entry, the Commission should eliminate the current restriction on unbundled switching (and thus on UNE-P) and define switching as an unrestricted UNE. To the extent that any further analysis is required, the Commission should defer as much responsibility as possible to the state commissions who are in the best position to conduct localized impairment analyses.

Respectfully submitted,

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